



House of Representatives

General Assembly

File No. 540

February Session, 2012

Substitute House Bill No. 5366

House of Representatives, April 19, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CIVIL ACTIONS AND SUBPOENAS FILED TO HARASS AN INDIVIDUAL OR AFTER NUMEROUS ACTIONS AGAINST THE INDIVIDUAL HAVE BEEN DISMISSED.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2012*) (a) (1) No civil action
2 shall be filed by a person who has been convicted of a crime
3 committed against the defendant in such civil action unless the
4 complaint or initial pleading contains a certificate, signed and sworn to
5 by the attorney or party filing the action, that a reasonable inquiry has
6 been made and that, in the opinion of the attorney or party, there are
7 grounds for a good faith belief that such action has merit and that such
8 action is not being filed for a malicious purpose or solely to harass the
9 defendant.

10 (2) No civil action shall be filed by a person who has had three or
11 more prior complaints or appeals against the defendant in such civil
12 action dismissed by a state or federal court on the grounds that such
13 complaints or appeals were frivolous or malicious or failed to state a

14 claim upon which relief may be granted unless the complaint or initial
15 pleading contains a certificate, signed and sworn to by the attorney or
16 party filing the action, that a reasonable inquiry has been made and
17 that, in the opinion of the attorney or party, there are grounds for a
18 good faith belief that such action has merit and that such action is not
19 being filed for a malicious purpose or solely to harass the defendant.

20 (3) Such certificate shall include a detailed basis for the formation of
21 such opinion.

22 (b) Upon the filing of the complaint or initial pleading with such
23 certificate, the court shall stay all proceedings against the defendant. If
24 the court finds, after review of the certificate and such other
25 information as it deems relevant to its review, that the plaintiff has
26 been convicted of a crime of which the defendant is a victim, or has
27 had three or more prior complaints or appeals against the defendant
28 dismissed by a state or federal court on the grounds that such
29 complaints or appeals were frivolous or malicious or failed to state a
30 claim upon which relief may be granted, and that the pending civil
31 action is without merit and was filed for a malicious purpose or solely
32 to harass the defendant, the court, on motion of the defendant or on its
33 own motion, may dismiss such action and may impose upon the
34 attorney or party filing the action, or both, an appropriate sanction
35 which may include an order to pay to the defendant the amount of the
36 reasonable expenses incurred because of the filing of the civil action,
37 including a reasonable attorney's fee. The court may also submit the
38 matter to the appropriate authority for disciplinary review of the
39 attorney if the party's attorney submitted the certificate.

40 (c) For the purposes of this section, "crime" includes, but is not
41 limited to, a family violence crime, as defined in section 46b-38a of the
42 general statutes.

43 Sec. 2. Section 52-161b of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective October 1, 2012*):

45 (a) A [pro se litigant in any] party in a civil matter, including a

46 habeas corpus proceeding, shall notify the clerk of the court if such
47 [litigant] party has been convicted of a family violence crime, as
48 defined in section 46b-38a, or a violation of section 53-21, 53a-70, 53a-
49 70a, 53a-70b, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-181c, 53a-181d or
50 53a-181e, and if the subject of a subpoena to be issued by such [litigant]
51 party in such matter is the victim of the crime for which such [litigant]
52 party was convicted.

53 (b) A [pro se litigant] party who has been convicted of [said] a
54 family violence crime or a violation of any of said sections shall not
55 issue a subpoena summoning a victim of the crime for which such
56 [litigant] party was convicted to appear and testify at a court hearing
57 or deposition in any civil matter, including a habeas corpus
58 proceeding, unless a court authorizes the issuance of such subpoena in
59 accordance with subsection (c) of this section.

60 (c) Whenever such [pro se litigant] party intends to issue a
61 subpoena to any such victim, such [litigant] party shall provide the
62 clerk of the court with notice of such intention. Upon receipt of such
63 notice, the clerk of the court shall schedule a hearing and provide
64 notice to [the pro se litigant] such party of the date, time and place of
65 such hearing. At such hearing, [the pro se litigant] such party shall
66 make an offer of proof as to the content of the testimony expected to be
67 given by the victim. If the court finds that the testimony expected to be
68 given by the victim is relevant and necessary to the civil matter, the
69 court shall authorize [the pro se litigant] such party to issue such
70 subpoena to such victim. The scope of such [litigant's] party's
71 examination of the victim shall be limited in accordance with the
72 court's findings on the offer of proof.

73 Sec. 3. (NEW) (*Effective October 1, 2012*) (a) A party in a civil matter,
74 including a habeas corpus proceeding, shall notify the clerk of the
75 court if the party has had three or more prior complaints or appeals
76 against the defendant in the civil matter dismissed by a state or federal
77 court on the grounds that such complaints or appeals were frivolous or
78 malicious or failed to state a claim upon which relief may be granted.

79 (b) A party who has had three or more prior complaints or appeals
80 against the defendant dismissed on such grounds shall not issue a
81 subpoena summoning the defendant to appear and testify at a court
82 hearing or deposition in any civil matter, including a habeas corpus
83 proceeding, unless a court authorizes the issuance of such subpoena in
84 accordance with subsection (c) of this section.

85 (c) Whenever such party intends to issue a subpoena to any such
86 defendant, such party shall provide the clerk of the court with notice of
87 such intention. Upon receipt of such notice, the clerk of the court shall
88 schedule a hearing and provide notice to such party of the date, time
89 and place of such hearing. At such hearing, such party shall make an
90 offer of proof as to the content of the testimony expected to be given by
91 the defendant. If the court finds that the testimony expected to be
92 given by the defendant is relevant and necessary to the civil matter, the
93 court shall authorize such party to issue such subpoena to such
94 defendant. The scope of such party's examination of the defendant
95 shall be limited in accordance with the court's findings on the offer of
96 proof.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	New section
Sec. 2	October 1, 2012	52-161b
Sec. 3	October 1, 2012	New section

Statement of Legislative Commissioners:

Section 1(b) was rewritten for consistency.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill does not result in a fiscal impact as it makes changes to gatekeeper requirements for civil lawsuits that the state does not participate in.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5366*****AN ACT CONCERNING CIVIL ACTIONS AND SUBPOENAS FILED TO HARASS AN INDIVIDUAL OR AFTER NUMEROUS ACTIONS AGAINST THE INDIVIDUAL HAVE BEEN DISMISSED.*****SUMMARY:**

This bill expands gatekeeper requirements when certain convicted criminals attempt to file civil lawsuits against their crime victims or summon them to a court or deposition hearing. It also imposes these limitations on parties who have repeatedly filed meritless actions and appeals against one individual. The bill also applies to attorneys participating in the proceedings, although it does not appear to be the case when a person who has filed multiple claims is seeking a subpoena.

The bill also authorizes judges to order sanctions against plaintiffs, their attorneys, or both when judges find such a complaint or initial pleading meritless or filed for a malicious purpose or solely to harass the defendant. It also gives judges the authority to report attorneys who have participated in such proceedings to the Statewide Grievance Committee, which they can already do under existing law.

EFFECTIVE DATE: October 1, 2012

FILING CIVIL COMPLAINTS

The bill requires those who have been convicted of crimes, including family violence crimes, to include certificates signed and sworn by the convicted person or his or her attorney with complaints or initial court filings against their victims. Certificates must state that a reasonable inquiry has been made and that, in the opinion of the convicted person or his or her attorney, there are grounds for a good faith belief that the action has merit and is not being filed for a

malicious purpose or solely to harass the crime victim. The bill requires the certificate to include a detailed basis for the formation of the signatory's opinion.

It imposes the same requirements on a person who has filed three or more meritless suits or appeals in state or federal courts.

Court Action

The bill requires the court to stay all proceedings against the defendant when a certified complaint or other initial pleading is filed (presumably, only proceedings in which the plaintiff is involved). It may dismiss the action if the defendant files a motion, or on its own motion, if it finds, after reviewing the certificate and other relevant information that the plaintiff has:

1. been convicted of a crime of which the defendant is a victim or,
2. had three or more complaints or appeals dismissed by a state or federal court based on its findings that such complaints or appeals are (a) frivolous or malicious or (b) failed to state a legal claim, and
3. that the pending civil action is meritless or filed for a malicious purpose or solely to harass the defendant.

The bill authorizes the court to impose appropriate sanctions on the person or attorney filing the action, or both. These may include an order to pay the defendant reasonable expenses incurred because of the filing of the action, including attorney's fees. It may also submit the matter to the Statewide Grievance Committee, which may result in the imposition of disciplinary action against the attorney.

FILING CIVIL SUBPOENAS

Under current law, an unrepresented person (*pro se* litigant) must get a judge's authorization before the court clerk will issue a subpoena, including one summoning a person to a habeas corpus proceeding, when its subject is the victim of one of the following crimes of which

the requesting litigant has been convicted:

1. a family violence crime;
2. risk of injury to minors;
3. 1st, 2nd, 3rd, or 4th degree sexual assault;
4. aggravated 1st degree sexual assault;
5. 3rd degree assault with a firearm;
6. sexual assault in a spousal or cohabiting relationship; or
7. 1st, 2nd, or 3rd degree stalking

The bill makes the same procedures applicable to those filing multiple, meritless lawsuits, whether or not represented by an attorney.

Court Hearing

Under the bill, when a party seeks a subpoena, he or she must notify the clerk of this intention. The clerk must schedule a hearing and notify the party of its date, time, and place. At the hearing, the party must make an offer of proof, disclosing the testimony he or she expects the victim to give. The judge may authorize the subpoena if he or she finds that the expected testimony is relevant and necessary to the civil matter. The party's subsequent examination of the victim must be consistent with any limitations the judge imposed in his or her findings on the offer of proof.

BACKGROUND

Rules of Professional Conduct

The Rules of Professional Conduct prohibit attorneys in this state from (1) initiating a court proceeding or making an assertion unless there is a basis in law and in fact for doing so that is not frivolous or (2) offering evidence that the attorney knows is false. If a lawyer or his or her client has offered material evidence that the lawyer learns is false,

he or she must take reasonable remedial measures including, if necessary, disclosing this to the court (Rules 3.1 and 3.3 (a)(3)).

Family Violence Crimes

Family violence crimes are those, other than delinquent acts, that in addition to other elements, contain an element of violence to a family member, including a housemate or person in, or formerly in, a dating relationship.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/02/2012)